



POLICE DEPARTMENT CITY OF NEW YORK

September 29, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Lamastra
Tax Registry No. 940354
Strategic Response Group 2 Bronx
Disciplinary Case No. 2015-13772

Police Officer Kenson Nelson
Tax Registry No. 940505
Strategic Response Group 1 Manhattan
Disciplinary Case No. 2015-13774

Charges and Specifications:

Disciplinary Case No. 2015-13772

1. Said Police Officer Michael Lamastra, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to request the response of a patrol supervisor while assigned to an assignment involving an emotionally disturbed person, as required.
P.G. 216-05, Page 2, Paragraph 2(a) MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS
2. Said Police Officer Michael Lamastra, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to enter details of his Emotionally Disturbed Person assignment in his Activity Log and failed to prepare an Aided Report worksheet for the Emotionally Disturbed Person, as required.
P.G. 216-05, Page 2, Paragraph 2(a) – MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS
3. Said Police Officer Michael Lamastra, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to generate a Complaint Report Worksheet after being informed that a complainant was the victim of a crime, as required.
Operations Order #5, 2012, Page 1, Paragraph 2(a) – PROPER PRELIMINARY INVESTIGATIONS OF COMPLAINTS, COMPLAINT RECORDING AND ACCURATE CLASSIFICATION OF COMPLAINTS

Disciplinary Case No. 2015-13774

1. Said Police Officer Kenson Nelson, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to request the response of a patrol supervisor while assigned to an assignment involving an emotionally disturbed person, as required.

P.G. 216-05, page 2, para 2(a) – MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS

2. Said Police Officer Kenson Nelson, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to enter details of his Emotionally Disturbed Person assignment in his Activity Log and failed to prepare an Aided Report worksheet for the Emotionally Disturbed Person, as required.

P.G. 216-05, page 2, para 2(a) – MENTALLY ILL OR EMOTIONALLY DISTURBED PERSONS

3. Said Police Officer Kenson Nelson, while on-duty and assigned to the 40th Precinct, on or about June 9, 2014, failed to generate a Complaint Report Worksheet after being informed that a complainant was the victim of a crime, as required.

Operations Order #5, 2012, para 1, para 2(a) – PROPER PRELIMINARY INVESTIGATIONS OF COMPLAINTS, COMPLAINT RECORDING AND ACCURATE CLASSIFICATION OF COMPLAINTS

Appearances:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, New York 10038

Hearing Date:

June 28, 2016

Decision:

Respondents are found guilty as charged.

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 28, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Assistant Department Advocate called Sergeant Brian Natoli as a witness. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondents guilty of the charged misconduct.

FINDINGS AND ANALYSIS

On June 9, 2014, Respondents were on-duty, performing patrol duties assigned to the 40 Precinct. Respondent Lamastra was the operator of their RMP and Respondent Nelson was serving as the recorder. At about 1855 hours, they responded to a radio transmission that an assault was in progress outside of 317 East 150th Street, the Bronx. Upon arriving at the location, Respondents were approached by [REDACTED], a local resident who had called 911. [REDACTED] told them that a woman whose name he did not know but who was known in the neighborhood as being emotionally disturbed had just hit a young girl, Person A, with an object.

Respondents visually inspected Person A and then radioed for an ambulance to respond to the scene. The ambulance transported Person A and her mother Person B to the hospital. Respondent Nelson prepared an aided report regarding Person A. Respondents then approached the emotionally disturbed woman and attempted to talk to her and ascertain her identity. Because the woman was incoherent, Respondents radioed for another ambulance to respond to the scene.

Respondent Nelson placed the woman in handcuffs and put her into the ambulance. Neither of the Respondents prepared a Complaint Report or an Aided Report for the woman, and neither Respondent radioed for a supervisor to respond to the scene.

Sergeant Brian Natoli, who is assigned to the Quality Assurance Division (QAD), testified that based on an allegation that the commanding officer of the 40 Precinct was downgrading crimes, QAD conducted an audit at the 40 precinct which included listening to the recordings of calls made to 911, and the radio dispatches of those calls, and reviewing complaint reports generated by those calls. Since QAD investigators found no complaint report which corresponded to [REDACTED] s assault-in-progress call to 911 and the radio dispatch of Respondents to the scene, both [REDACTED] and Person B were interviewed via telephone.

At his recorded interview [Department Exhibit (DX) 1], [REDACTED] stated that on June 9, 2014, he saw the emotionally disturbed woman run up to Person A and hit her in the head with "the metal part" of a hand squeeze exercise object and that he then saw that Person A had a "red bruise" where the object had contacted her head. At her recorded interview (DX 2), Person B stated¹ that the woman had "jumped" on her daughter and struck her "on her forehead" with an object "that men use to make their arms strong" which was "like a bottle opener" and "looks like scissors." The object caused a "red" colored "bump" to Person A's forehead. Person B stated that when Respondents arrived they called for an ambulance. Since Person B accompanied her daughter to the hospital in the ambulance, she did not speak to the officers about the incident.

Sergeant Natoli obtained Respondents' Activity Log entries for June 9, 2014. In his Activity Log entry regarding this incident, Respondent Lamastra wrote that at "1855" they

¹ Since Person B only speaks Spanish, a Spanish speaking sergeant served as her translator at this interview.

responded to a "34" (assault in progress) call at "317 E 150" and that persons had been transported via ambulances to "████████" (DX 3) Respondent Nelson also wrote in his Activity Log (DX 4) that they had responded to a radio transmission that an assault was in progress at 317 East 150th Street, that two persons had been "97H" (removed to the hospital) from the scene and that one was an "EDP" (emotionally disturbed person), and that a report had been prepared ("93Q") which was not a complaint report. Natoli opined that Respondents should have prepared a complaint report for assault or endangering the welfare of a child or harassment.

Respondent Nelson testified that ██████████ described the object that the EDP hit Person A with as a plastic object. Respondents spoke to two women, one of whom was Person A's mother. Respondent Nelson testified that he and his partner visually inspected Person A, who was crying, to ascertain whether she had suffered any physical injury. Since they did not see any marks on ██████████ when they inspected her, they did not prepare a complaint report. Although they did not observe any injury to Person A, they decided to call for an ambulance anyway. Respondent Nelson completed an aided card regarding Person A. After the ambulance left, he and Respondent Lamastra spoke to the woman who had hit Person A. Respondent Nelson described her as "erratic." He and his partner handcuffed her and escorted her to the hospital in another ambulance. They did not complete an aided card regarding the woman. Respondent Nelson conceded that they could have prepared a complaint report charging the EDP with harassment or attempted assault and that they never considered charging the EDP with the crime of endangering the welfare of a child.

Respondent Lamastra testified that ██████████ told them that the woman who had hit the child was known in the neighborhood as "a pest or a nuisance when she is off her medication."

Since Respondent Lamastra and his partner are not fluent in Spanish, they could not communicate with Person B, so they spoke to the woman who was with Person B. Respondent Lamastra testified that he did not observe the child crying and that his "general impression" was that the child was fine. After the ambulance transporting the child and her mother to the hospital had left, he and Respondent Nelson tried to talk to the EDP to see if she was "in the right frame of mind, if she was dangerous, or if she was off of her medication and being a pest like the man had previously said." When they were unable to get any clear statements from the woman, they called for an ambulance and escorted her to the hospital. They did not complete an aided card regarding the woman. Respondent Lamastra testified that he did not radio for a supervisor to respond to the scene because he has dealt with many EDPs and the only time he has ever called a supervisor to a scene involving an EDP was when "the interaction could get violent; when they needed the supervisor to use his taser; and for other situations that are not routine." Respondent Lamastra testified that this incident was not one of those situations.

Analysis

With regard to Specification No. 1, Respondents acknowledged that even though when they spoke to the woman who [REDACTED] asserted had hit a child with an object she was erratic and incoherent and appeared to be an Emotionally Disturbed Person (EDP), they decided not to notify their patrol supervisor to respond to the scene because, as Respondent Lamastra testified, it was their common practice not to call a supervisor unless an EDP was acting violently and they needed their supervisor to bring a Conducted Electrical Device (CED) to the scene to subdue the EDP or the situation was otherwise not a routine one. However, the cited Patrol Guide Procedure does not grant officers the discretion to decide on their own whether or not to make this notification. Rather, the Patrol Guide Procedure requires that officers who are dealing

with an EPD request the response of a patrol supervisor. Since Respondents failed to comply with this mandate, they are found guilty of Specification No. 1.

As to Specification No. 2, it is not disputed that neither Respondent prepared an Aided Report worksheet regarding their action of aiding the EDP by arranging for an ambulance to transport her to a hospital for psychiatric evaluation. Also, Respondents' Activity Log entries for June 9, 2014 (DX 3 & DX 4) show that they did not make any entry that they had interviewed the person who had called 911 ([REDACTED] or that he had told them that he had witnessed the EDP hit a young girl (Person A) with an object, or any details regarding their visual inspection of the young girl who was allegedly hit. Therefore, they are found guilty of Specification No. 2.

Finally, it is charged under Specification No. 3 that Respondents failed to generate a Complaint Report Worksheet after being informed that Person A was the victim of a crime.

[REDACTED] stated that Person A had a "red bruise" on her head where she had been hit and her mother stated that Person A had a "red " colored "bump" on her forehead. Respondents' claim that they did not notice any injury to Person A has some support in Person B's statement that the injury to Person A 's forehead was, "Not much, it was just a bump. But it wasn't much ." (DX 2 lines 49-51).

However, even if I credited Respondents' claims that they did not personally observe any injury to Person A, I credit Natoli's testimony that a complaint report should have been prepared because the EDP had committed an assault and had endangered the welfare of a child or, at a minimum, had committed harassment.

Respondent Nelson acknowledged that he could have prepared a complaint report that the 3. EDP had committed harassment. Therefore, Respondents are found guilty of Specification No.

PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondents Lamastra and Nelson were both appointed to the Department on January 9, 2006. Information from their personnel records that was considered in making these penalty recommendations is contained in attached Confidential Memoranda. Neither Respondent has a formal disciplinary record.

The Assistant Department Advocate (the Advocate) recommended that both Respondents forfeit 15 vacation days each as a penalty. In support of this recommendation, the Advocate cited *Case No. 2014-12297* (signed April 15, 2015), where a 19-year detective who had no prior disciplinary record forfeited 20 vacation days as a penalty after he pleaded guilty to having failed to request a patrol supervisor to respond to the scene of an incident involving an EDP and having failed to adequately maintain his activity log regarding the incident. However, that detective also pleaded guilty to having failed to isolate, contain and arrest the EDP who he had observed menacing civilians with a knife.

The Advocate also cited *Case Nos. 2014-12293, 2014-12294 & 2014-12295* (signed Feb. 13, 2015), where a 20-year officer who had one prior disciplinary adjudication; an 18-year officer who had two prior disciplinary adjudications; and a 24-year detective who had one prior disciplinary adjudication; each forfeited 20 vacation days after they all pleaded guilty to having failed to request a patrol supervisor to respond to the scene of an incident involving an EDP and failing to adequately maintain their activity logs regarding the incident. However, all three also pleaded guilty to having failed to isolate, contain and arrest the EDP who they had observed menacing civilians with a knife; and the detective also pleaded guilty to having made an inappropriate remark to the EDP.

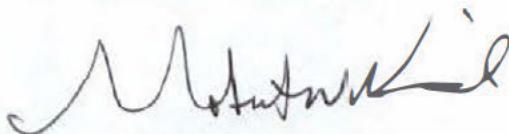
Here, unlike the cases cited above, the Advocate agreed that Respondents had isolated and contained the EDP (Tr. p. 88).

Most recently, in *Case Nos. 2015-14513 & 2015-14514*, (signed June 9, 2016), a four-year officer who had one prior adjudication and a ten-year officer who had no prior disciplinary record, each forfeited a penalty of 15 vacation days after they pleaded guilty to having failed to prepare an aided report and failed to make proper Activity Log entries. However, the officers in that case also failed to accompany an unidentified aided person to the hospital; failed to obtain information regarding a relative of the aided person for notification purposes; and the four-year officer also failed to transmit a proper radio disposition. Here, in contrast, the Advocate agreed that Respondents accompanied the EDP to the hospital and prepared an aided report regarding Person A.

In formulating penalty recommendations here, I have also taken into consideration Natoli's testimony that Respondents responded to the 911 call in a timely manner and that they promptly performed and documented the most important task they were faced with upon arriving at the scene: obtaining immediate medical attention for Person A by calling for an ambulance to take her and her mother to the hospital. I have also taken into consideration Respondent Lamastra's unrefuted testimony that this incident occurred during the course of a very busy tour of duty during which Respondents responded to about a dozen radio calls.

Therefore, I recommend that each Respondent forfeit ten vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

JAN 24 2017
James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KENSON NELSON
TAX REGISTRY NO. 940505
DISCIPLINARY CASE NO. 2015-13774

Respondent received an overall rating of 3.5 on his 2015 evaluation, 3.0 on his 2014 evaluation, and 3.5 on his 2013 evaluation. He has been awarded three Meritorious Police Duty medals and three Excellent Police Duty medals. [REDACTED]

[REDACTED] He has no formal disciplinary record. On March 23, 2016, he was placed on Level 1 Performance monitoring. This monitoring is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL LAMASTRA
TAX REGISTRY NO. 940354
DISCIPLINARY CASE NO. 2015-13772

Respondent received an overall rating of 3.5 on his 2015 evaluation, 3.0 on his 2014 evaluation, and 3.5 on his 2013 evaluation. He has been awarded two Meritorious Police Duty medals and four Excellent Police Duty medals. [REDACTED]

[REDACTED] He has no formal disciplinary record. He has no monitoring records.

For your consideration.

A handwritten signature in black ink, appearing to read "Robert W. Vinal".

Robert W. Vinal
Assistant Deputy Commissioner Trials